

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**LEE NIX, #126666**

**PETITIONER**

**v.**

**CAUSE NO. 1:13CV580-LG-JCG**

**DWAIN BREWER**

**RESPONDENT**

**ORDER ADOPTING REPORT AND RECOMMENDATIONS AND  
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

This cause comes before the Court on the Report and Recommendations [10] of United States Magistrate Judge John C. Gargiulo entered in this cause on July 17, 2015. Magistrate Judge Gargiulo reviewed Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and the Respondent's Answer to the petition. Magistrate Judge Gargiulo determined that the grounds asserted in the Application did not entitle Petitioner to relief because the Mississippi Supreme Court's factual findings concerning the age of Petitioner's victim were not unreasonable, nor did the court unreasonably apply the federal sufficiency of the evidence standard.

Petitioner's copy of the Report and Recommendations was mailed to his address on file and receipt was acknowledged prior to July 21, 2015.<sup>1</sup> The Petitioner has not filed any objection to the Magistrate Judge's findings or conclusions. Under these circumstances, the Court need only review the Report and

---

<sup>1</sup> The Acknowledgment of Receipt was returned to the Court on July 21, 2015. (See Acknowledgment, ECF No. 11). The date of receipt by the Petitioner is not noted on the form, but was necessarily before July 21.

Recommendations and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). After having thoroughly reviewed the Report and Recommendations, the Court finds it neither clearly erroneous nor contrary to law. The findings and conclusions therein will be adopted as the findings and conclusions of this Court.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the Report and Recommendations [10] of United States Magistrate Judge John C. Gargiulo entered in this cause on July 17, 2015, should be, and the same hereby is, adopted as the findings of this Court.

**IT IS FURTHER ORDERED AND ADJUDGED** that Petitioner's Application for habeas corpus relief pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

**SO ORDERED AND ADJUDGED** this the 10<sup>th</sup> day of August, 2015.

s/ *Louis Guirola, Jr.*  
LOUIS GUIROLA, JR.  
CHIEF U.S. DISTRICT JUDGE